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10/568,100	02/13/2006	Satoru Shiraishi	0080-0241PUS1	8151
2292 7590 09/24/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
MATTER, KRISTIN CLARETTE				
ART UNIT		PAPER NUMBER		
3771				
NOTIFICATION DATE		DELIVERY MODE		
09/24/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/568,100

Applicant(s)

SHIRAIISHI, SATORU

Examiner

KRISTEN C. MATTER

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/IB)
Paper No(s)/Mail Date 2/13/06, 5/19/09, 9/21/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-12, 14, 18, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7, 8, 10, 12, 14, 18, and 19 all refer to “the massaging member” within the claim, but “a pair of massaging members” has been previously claimed within the claim set (i.e., in claims 7, 8, 14, 18, and 19 in lines 1-2 of each). This makes it unclear as to which massaging member of the pair is being referred to later on or if both massaging members are to be effected by the further limitations.

Claim 9 and 11 are dependent on claims 7 and 8, respectively, and are therefore rejected for the same reasons outlined above with respect to claims 7 and 8.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 2, 15-17, and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by Nishibori et al. (JP2002065786, herein referred to as “Nishibori”).

Regarding claims 2, 15, and 17, Nishibori discloses a lower leg massager comprising a leg rest having a first massaging mechanism (1a) disposed inside of the leg rest (inasmuch as the mechanism is within insertion recesses and/or has at least part of the mechanism disposed within the device at the attachment point and tubing) for massing a user's calves, a footrest having a second massaging mechanism (1b) disposed in the footrest for massaging the soles of a user's feet, and a driving mechanism (15) disposed in an intermediate position in the left and right direction of the leg rest and/or footrest for independently driving the first and second massaging mechanisms (i.e., the air bags are inflated via separate inflation lines and the controller is programmed to allow only one or a combination of the airbags to be inflated simultaneously).

Regarding claim 16, Nishibori discloses a single supporting body (frame 10) for supporting the massaging and driving mechanisms.

Regarding claim 20, Nishibori discloses left and right insertion recesses for the legs and feet with the driving mechanism disposed in a space extending between the foot and leg recesses (see Figure 9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng (US 2004/0186399).

Regarding claims 1, 3, and 6, Tseng discloses a leg massager comprising a leg-rest having a first massaging mechanism (30) for receiving each calf of a user, a footrest disposed on an end of the leg rest and having a second massaging mechanism (20) for massaging the sole of a user's foot, and a single driving mechanism (M) disposed in an intermediate position in a right and left direction of the leg rest and/or foot rest for simultaneously driving the first and second massaging mechanisms (paragraph 20). Tseng does not specifically disclose that the massaging mechanisms are "disposed inside" of anything. However, massaging covers are well known and commonly used in the art for providing increased comfort and protecting a user from the mechanical components of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the device and massaging mechanisms of Tseng's device inside of a cover, for example, to protect the user from moving parts and to increase comfort. Furthermore, it appears as though Tseng's device would perform equally well if used within a cover.

Regarding claim 5, a single supporting body (10) supports the massaging and driving mechanisms.

Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over CN-2496447-Y (herein referred to as the '447 patent).

Regarding claims 1, 3, and 6, the '447 patent discloses a lower leg massager comprising a leg-rest having a first massaging mechanism (3 or 4) configured to receive and massage each calf of a user, a footrest on an end of the leg rest having a second massaging mechanism (3 or 4) configured to receive and massage each foot of a user, and a single driving mechanism (2)

disposed at an intermediate position in a left and right direction of the leg rest and/or footrest for simultaneously driving the first and second massaging mechanisms. Either of the massaging mechanisms can be considered to lie on a footrest or a leg rest inasmuch as both massaging mechanisms are fully capable of massaging either a calf or foot depending on how a user placed his or her legs on the device (i.e., the balls 3 could knead the calves while the paddles 4 pinched the sides of the foot or the paddles could pinch the calves while the balls massaged a foot back, side or sole depending on how a user placed their feet on the device). The '447 patent does not specifically disclose that the massaging mechanisms are "disposed inside" of anything. However, massaging covers are well known and commonly used in the art for providing increased comfort and protecting a user from the mechanical components of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed the device and massaging mechanisms of the '447 patent inside of a cover, for example, to protect the user from moving parts and to increase comfort. Furthermore, it appears as though the device of the '447 patent would perform equally well if used within a cover.

Regarding claim 4, the driving mechanism is a single motor having a driving shaft extending towards both massaging mechanisms.

Regarding claim 5, a single supporting body (1) supports both massaging mechanisms and the driving mechanism

Claims 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng as applied to claims 1, 3, 5, and 6 above, and further in view of Shimizu (US 2002/0161316).

Regarding claim 7, the first massaging mechanism comprise a pair of massaging members disposed away from each other in a left and right direction so as to enclose a calf or foot between, a rotation shaft (see Figure 7) rotated by the driving mechanism, a rotary member (30/60) fixed to the rotation shaft and relatively rotatably fitted in the massaging members, and a restricting means (the keys for fixing the paddles to the shaft) for restricting rotation of the massaging members. Tseng does not explicitly disclose the rotary member having a sliding surface formed in a cylindrical-shape tilting with respect to the rotation shaft. However, Shimizu discloses a lower leg massager with paddles that are attached to a rotation shaft via a sliding surface formed in a cylindrical-shape tilting (see Figures 3-4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have attached the paddles of Tseng to the shaft with a sliding surface as taught by Shimizu in order to produce the swinging motion needed for massing the leg. Such combination would involve the use of a well known method in a well known result to produce predictable results that do not patentably distinguish an invention over the prior art. Furthermore, it appears as though Tseng would perform equally well with any well known means of rotating/swinging the massaging mechanisms.

Regarding claim 9, as discussed above, Tseng is silent as to the cover or chair of the device. However, insertion recesses are well known and commonly used in the art (see for example US 2006/0217642 and the Shimizu reference). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Tseng's device with a pair of insertion recesses in order to secure the leg in position for example. Furthermore, it appears as though Tseng's device would perform equally well with insertion

recesses. The position of the motor would lie between the insertion recesses since it lies in a plane parallel and in between the left and right leg massaging members.

Regarding claim 10, Tseng is silent as to the massaging members being elastically deformable. However, Shimizu discloses an elastic portion (25) on the massaging member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the paddles of Tseng with a cushion piece as taught by Shimizu in order to equalize the pressing force applied to the lower leg. Furthermore, it appears as though the device of Tseng would perform equally well with a cushion portion on the massaging members (i.e., see the protrusion disclosed by Tseng in Figure 3).

Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the ‘447 patent as applied to claims 1 and 3-6 above, and further in view of Shimizu (US 2002/0161316).

Regarding claims 7 and 8, the massaging mechanisms can be arbitrarily labeled as first or second massaging mechanisms as described above. Paddles (4) comprise a pair of massaging members (42) disposed away from each other in a left and right direction so as to enclose a calf or foot between, a rotation shaft (see Figure 1) rotated by the driving mechanism, a rotary member (4) fixed to the rotation shaft and relatively rotatably fitted in the massaging members, and a restricting means (the keys for fixing the paddles to the shaft) for restricting rotation of the massaging members. The ‘447 patent does not explicitly disclose the rotary member having a sliding surface formed in a cylindrical-shape tilting with respect to the rotation shaft (examiner notes the rejection is based off of the figures and a rough machine translation of the patent so it is

unclear how the paddles are attached to the shaft exactly). However, Shimizu discloses a lower leg massager with paddles that are attached to a rotation shaft via a sliding surface formed in a cylindrical-shape tilting (see Figures 3-4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have attached the paddles of the '447 patent to the shaft with a sliding surface as taught by Shimizu in order to produce the swinging motion needed for massing the leg. Such combination would involve the use of a well known method in a well known result to produce predictable results that do not patentably distinguish an invention over the prior art. Furthermore, it appears as though the '447 patent would perform equally well with any well known means of rotating/swinging the massaging mechanisms.

Regarding claims 9, 11, and 13, as discussed above, the '447 patent is silent as to the cover or chair of the device. However, insertion recesses are well known and commonly used in the art (see for example US 2006/0217642 and the Shimizu reference). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the '447 patent with a pair of insertion recesses in order to secure the leg in position for example. Furthermore, it appears as though the device of the '447 patent would perform equally well with insertion recesses. The position of the motor would lie between the insertion recesses since it lies in a plane parallel and in between the left and right leg massaging members.

Regarding claims 10 and 12, the '447 patent is silent as to the massaging members being elastically deformable. However, Shimizu discloses an elastic portion (25) on the massaging member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the paddles of the '447 patent with a cushion piece as

taught by Shimizu in order to equalize the pressing force applied to the lower leg. Furthermore, it appears as though the device of the '447 patent would perform equally well with a cushion portion on the massaging members.

Allowable Subject Matter

Claims 14, 18, and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art cited is to show other similar massage chairs with paddles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771